IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

GERALD DELAVERGNE,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No.
	§	
SAGEMCOM COMMUNICATIONS USA, LLC; SAGEMCOM CANADA, INC AND ADMINISTAFF COMPANIES, INC.	§ § §	
	§	
Defendants.	§	

PLAINTIFF, GERALD DELAVERGNE'S, ORIGINAL COMPLAINT AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Gerald DeLaVergne, hereinafter called Plaintiff, complaining of and about Sagemcom Communications USA, LLC, Sagemcom Canada, Inc., and Administaff Companies, Inc., hereinafter called Defendants, under the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §621 et. seq., and the Texas Commission on Human Rights Act (“TCHRA”), Tex. Labor Code §21.001, et. seq. and for cause of action shows unto the Court the following:

PARTIES AND SERVICE

1. Plaintiff Gerald DeLaVergne is a citizen of the United States and the State of Texas and resides in Collin County, Texas.

2. Defendant Sagemcom Communications USA, LLC may be served by serving Corporation Service Company dba CSC-Lawyers, its agent authorized to accept service at 2311 E. 7th Street Suite 620, Austin, Texas 78701.

3. Defendant Sagemcom Canada, Inc. may be served by serving a corporate agent Bob Wood, Sagemcom USA, LLC, 2711 Centerville Road, Wilmington, DE 19808.

4. Defendant Administaff Companies, Inc. may be served by serving Corporation Service Company, its agent authorized to accept service at 211 E. 7th Street Suite 620, Austin, Texas 78701.

JURISDICTION

5. This court has jurisdiction to hear the merits of Plaintiff's claims under 28 U.S.C. §1331 and 29 U.S.C. §626.

6. This Court has supplemental jurisdiction over Plaintiff's state law claims under 29 U.S.C. §1367 because those claims are so related to Plaintiff's claims within the Court's original jurisdiction that they form part of the same case and controversy.

7. A substantial portion of the acts and commission giving rise to Plaintiff's claims occurred in Lucas, Collin County Texas. Venue is therefore proper in the district and division under 28 U.S.C. §1391.

8. Plaintiff filed a charge with the Equal Employment Opportunity Commission ("EEOC") and the Texas Workforce Commission – Civil Rights Division ("TWC-CRD") on or about November 3, 2010, and an amended charge of discrimination on or about December 21, 2010.

9. More than sixty days have elapsed since Plaintiff filed his charges of discrimination. Plaintiff has requested right-to-sue letters from the EEOC and the TWC-CRD.

10. All conditions precedent to jurisdiction have occurred or been complied with.

FACTS

11. Sagemcom Communications LLC is a company which employed Plaintiff and therefore is an “employer” as that term is defined in 29 U.S.C. §630(b) and Tex. Labor Code §21.002(8).

12. Sagemcom Canada, Inc. manages Sagemcom Communications LLC and therefore is an “employer” as that term is defined in 29 U.S.C. §630(b) and Tex. Labor Code §21.002(8).

13. Administaff Companies, Inc. was an employer of Plaintiff and therefore is an “employer” as that term is defined in 29 U.S.C. §630(b) and Tex. Labor Code §21.002(8).

14. Defendants Sagemcom Communications LLC, Sagemcom Canada, Inc. and Administaff Companies, Inc. were joint employers of Plaintiff.

15. Plaintiff was born on February 22, 1954. He has had a successful career in sales and sales management of computer software products. He was 56 years old at the time of his termination by Defendants. At all material times Plaintiff was 40 years of age or older.

16. Plaintiff began work for Defendant on September 27, 2007. He worked as a Regional Sales Manager. He sold software for integrating faxes onto computer servers (getting faxes directly by email eliminating the need for fax machines and telephone lines).

17. On April 12, 2010 Defendants put Plaintiff on a performance improvement plan for failure to achieve quotas. At that time five other individuals younger than Plaintiff had worse sales records than Plaintiff.

18. On August 27, 2010 Defendant terminated Plaintiff..

19. Plaintiff was terminated by telephone call and email with a subsequent letter. Diane Vauclair, Director of Human Resources for Defendant Sagemcom Canada, Inc. was on the telephone call when Plaintiff was terminated.

20. Employees younger than Plaintiff had worse records in terms on not meeting sales quotas but they were not terminated.

21. During his employment, Plaintiff's supervisor Don Aronson referred to Plaintiff as "pops", "old timer", and a "weak piece of shit".

COUNT ONE: ADEA AGE DISCRIMINATION

22. Plaintiff repeats and realleges the allegations contained in paragraph 1 through 20 above as if fully stated herein.

23. Defendants intentionally engaged in unlawful employment practices involving Plaintiff because of his age. Specifically, Defendants terminated Plaintiff for failure to meet his sales quota while retaining younger workers who failed to meet their sales quotas.

24. Defendants discriminated against Plaintiff in connection with the compensation, terms, conditions and privileges of employment or limited, segregated or classified Plaintiff in a manner that would deprive or tend to deprive him of any employment opportunity or adversely affect his status because of Plaintiff's age in violation of the Age Discrimination in Employment Act.

25. Defendants' acts were willful thereby entitling Plaintiff to liquidated damages under 29 U.S.C. §626(b).

26. Plaintiff seeks attorneys' fees and costs of suit under 29 U.S.C. §626(b).

COUNT TWO: TCHRA AGE DISCRIMINATION

27. Plaintiff realleges and incorporates the allegations contained in paragraphs 1 through 26 above.

28. Defendants intentionally engaged in unlawful employment practices involving Plaintiff because of his age. Defendants terminated Plaintiff for failure to meet his sales quota while retaining younger workers who failed to meet their sales quotas.

29. Defendants discriminated against Plaintiff in connection with the compensation, terms, conditions and privileges of employment or limited, segregated or classified Plaintiff in a manner that would deprive or tend to deprive him of any employment opportunity or adversely affect his status because of Plaintiff's age in violation of the Texas Labor Code §21.051.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Gerald DeLaVergne, respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants, jointly and severally, for

a. Back pay, including but not limited to, lost wages and employment benefits;

b. Equitable relief necessary to place Plaintiff in the position that he would have held but for Defendant’s discriminatory treatment; and if such relief be infeasible, front pay;

c. Actual damages

d. Liquidated damages in the maximum amount allowed by law

e. Compensatory and/or Punitive Damages in the maximum amount allowed by law

f. Prejudgment and post-judgment interest in the maximum amount allowed by law;

g. Attorneys fees, expert fees, and costs of suit, and

h. Any further legal and equitable relief to which Plaintiff may be justly entitled.

JURY DEMAND

Under Federal Rule of Civil Procedure 38(b), Plaintiff hereby requests a jury trial on all issues triable of right by a jury.

Respectfully submitted,

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